

APR 20 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	AAD/USB File No. 98-50
_____)	DA No. 98-608

**AT&T COMMENTS IN SUPPORT OF NEW JERSEY RATEPAYER ADVOCATE
PETITION FOR EXPEDITED DECLARATORY RULING**

Pursuant to the Commission's Public Notice, DA No. 98-608, released March 30, 1998, AT&T Corp. ("AT&T") submits these comments in support of the New Jersey Ratepayer Advocate's Petition for Expedited Declaratory Ruling ("Ratepayer Advocate"), which seeks to ensure that Bell Atlantic does not violate the Commission's Fourth Reconsideration Order in this proceeding.¹ As the Ratepayer Advocate demonstrates, it appears that Bell Atlantic would like to have its cake and eat it too, all at the expense of schools and libraries who would be deprived of subsidies needlessly directed to Bell Atlantic and at the expense of consumers who must shoulder the cost burden of the federal universal service fund ("USF").

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Fourth Order on Reconsideration, FCC 97-420, released December 30, 1997 ("Fourth Reconsideration Order").

Bell Atlantic first enters into a settlement agreement with the New Jersey Board of Public Utilities and the Ratepayer Advocate, in which it voluntarily agrees to provide discounted, generally available, above-cost tariffed rates for schools and libraries with the discount to be funded solely by Bell Atlantic as part of the bargain whereby it received favorable incentive price cap regulation at the state level.² Then, Bell Atlantic does an about-face and contends that these discounted rates are not the lowest corresponding price for federal USF purposes, but that rather the USF should fund the difference between Bell Atlantic's discounted tariff rate paid by schools and libraries under the Access New Jersey program and its *full* tariff rate, despite the fact that Bell Atlantic committed to fund the Access New Jersey discount from its own pocket. The Commission must not tolerate this kind of chicanery.

The Ratepayer Advocate (at 11-12) is absolutely right that the Commission has already addressed and rejected Bell Atlantic's contentions. In the Fourth Reconsideration Order (para. 141), the Commission held that "the universal service discount mechanism is not funding the difference between the generally available rates and special school rates, as suggested by Bell Atlantic, but is applied to the price at which the

² Ratepayer Advocate at 4-7, 14.

service provider agrees to provide the services to eligible schools and libraries." (*emphasis added*).

Nor, as the Ratepayer Advocate points out (at 12-13), are the Access New Jersey rates a "special regulatory subsidy" that under the May 8, 1997 Universal Service Order (FCC 97-157, para. 489) need not be used in determining the lowest corresponding price. Under the Commission's USF program, service providers seeking reimbursement from the USF must offer eligible schools and libraries prices no higher than the lowest price available to similarly situated non-residential customers for similar services in the same area, *i.e.*, the lowest corresponding price. *Id.*, para. 484. However, a service provider is not required to match a price offered to a customer who is receiving a special regulatory subsidy or one negotiated under very different conditions, if offering the service at such a price would result in a rate below TSLRIC. *Id.*, para. 489.

As the Ratepayer Advocate points out (at 13), the Access New Jersey rates, although discounted, are fully compensatory, not subsidized by any other fund, so there is no shortfall to qualify as a "special regulatory subsidy." Moreover, these rates do not qualify as a "contract negotiated under very different conditions" because they are generally available to all members of the class of customers and, indeed, the rates were not negotiated with the eligible institutions. Rather, the

- 4 -

settlement was between New Jersey regulators, the Ratepayer Advocate and Bell Atlantic, in return for which Bell Atlantic already received substantial benefit from the state. Thus, the Access New Jersey rates are properly treated as the lowest corresponding price and the ceiling for purposes of calculating the USF subsidy. To hold otherwise would require the USF to underwrite Bell Atlantic's pre-existing commitment to New Jersey, at the expense of schools and libraries and, ultimately, consumers.

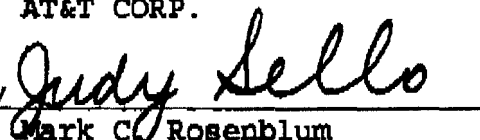
CONCLUSION

For the reasons stated above, the Commission should grant the Ratepayer Advocate's petition and declare that Bell Atlantic must treat its Access New Jersey program rates as the lowest corresponding rate for purposes of federal universal service reimbursement.

Respectfully submitted,

AT&T CORP.

By /s/



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CERTIFICATE OF SERVICE

I, Viola J. Carlone, do hereby certify that on this 20th day of April, 1998, a copy of the foregoing AT&T Comments in Support of New Jersey Ratepayer Advocate Petition for Expedited Declaratory Ruling was served by U.S. first class mail, postage prepaid, to the parties listed below.

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